

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL No. 591 of 1984**

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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ORIENTAL FIRE & GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
OKHAJI VELUJI THAKOR & 7 - Defendant(s)

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Appearance :

MR RAJNI H MEHTA for Appellant(s) : 1,
MR SV RAJU for Defendant(s) : 1 - 5.
MR MC BHATT for Defendant(s) : 6 - 8.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 07/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgement and award dated 21.11.83 passed by the Motor Accident Claim Tribunal (Main) Banaskantha at Palanpur in MACP No. 168 of 1982 whereby the Tribunal directed the original opponent nos. 1, 3 and 4 to pay an amount of Rs. 68500/- to the original applicants alongwith running interest at the rate of 6% per annum.

2. The original applicants being the legal representatives of the deceased filed claim petition

seeking compensation to the tune of Rs. 1,00,000/- in respect of the accident which occurred on 17.02.82 while the deceased namely Dharji Okhaji was going towards Ratanpur village from Khimana village on foot. At that time, the tractor towing a motor vehicle driven by original opponent no.3 in a rash and negligent manner and owned by original opponent no.2 overturned because of breakage of a rear towing wire, as a result of which the deceased got crushed under the tractor and expired. The claim petition came to be filed by the parents, wife and children of the deceased under the said circumstances. The Tribunal after hearing the parties passed the aforesaid award.

3. Mr Sunil Parikh, learned counsel for the appellant has contended that the Tribunal has erred in not considering the provisions of Sections 95 and 96 of the Motor Vehicle Act and the Rules made thereunder. He has further contended that the Tribunal erred in not finding that the vehicle was used in breach of the specific condition in the policy at the time of the accident as the vehicle was towing a trailer which is not a disabled mechanically propelled vehicle and therefore the Tribunal ought to have held that the appellant company is not liable.

4. Heard learned counsel and gone through the documents placed on record. The Tribunal has gone through the various oral and documentary evidence, more particularly, the policies produced at Ex. 38 and Ex. 37. As a result of perusal of records, it is evident that section III of the policy clearly states that the policy shall be operative whilst the motor vehicle is being used for the purpose of towing any one disabled mechanically propelled vehicle provided that such towed vehicle is not towed for reward and that the policy will not cover damage to such towed vehicle or the property being conveyed thereby. Therefore, this clause clearly lays down that towing is permissible and it is included under the terms and conditions of the agreement.

4.1 Moreover, the complaint given by original opponent no. 3 at Ex. 27 shows that this tractor which is covered by the policy, overturned and the person was crushed below this tractor. I am of the opinion that the policy which is in respect to the tractor which further permits towing by this very tractor covers up the incident in question as the terms of the policy permits the tractor in question to tow a vehicle and while towing if any person is injured then the insurance company is liable.

In that view of the matter, section III clearly applies to the facts of the present case and would not absolve the liability of the insurance company. I, therefore, see no reason to interfere in the present appeal.

5. For the foregoing reasons, the appeal is dismissed.
No order as to costs.

(K.S. JHAVERI, J.)

Divya//